

# Oregon Real Estate News-Journal

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Commissioner  
Gene Bentley

## Principal Brokers Renewing Active for 1st Time on, after July 1, 2019, Must Take Advanced Practices

*Gene Bentley, Real Estate Commissioner*

**H**ouse Bill 4048, passed by the Oregon Legislature in February, established a new required course for new principal brokers. The 27-hour Principal Broker Advanced Practices (PBAP) course must be completed by any principal broker renewing an active license for the first time on or after July 1, 2019. Any principal broker whose first renewal was inactive must also take the course to reactivate the license for the first time on or after July 1, 2019.

The course outline has been developed with the assistance of a work group. The Oregon Real Estate Agency will send the approved course content outline to continuing education providers this month.

We hope that PBAP courses will be available as early as October 2018.

**My principal broker license expires  
for the first time after July 1, 2019.**

### What do I need to know?

- To renew your license active, you must take the 27-hour PBAP course and the 3-hour Law and Rule Required Course (LARRC). These courses meet your continuing education requirement for license renewal.
- To renew your license inactive, you do not need any education. But you will need the 27-hour PBAP course and the 3-hour LARRC to reactivate your license.
- The PBAP course is not available yet. We hope course providers will start offering Agency-approved classes by October 2018.
- Any other courses you may have taken in the 2 years prior to your license expiration date, including the 40-hour Brokerage Administration and Sales Supervision (BASS) course, will not count toward your continuing education

*Please see **Principal Brokers** on page 3*



Oregon Real Estate  
Agency  
530 Center St. NE  
Suite 100  
Salem, OR 97301  
(503) 378-4170  
(503) 378-2491 Fax  
[www.oregon.gov/rea](http://www.oregon.gov/rea)

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## Views from the Board

# Negotiations Basics: How to Get Started!

Coni S. Rathbone, Oregon Real Estate Board Member



Coni S. Rathbone

“Views from the Board” features the opinions of Real Estate Board members. The views expressed are not necessarily those of the *Oregon Real Estate News-Journal*, the Oregon Real Estate Agency or Agency staff.

If you are like most people, you have been negotiating all your life, whether or not you were conscious of it. Any parent who has said to their child “three more bites” at the dinner table is entering into a negotiation, and also teaching the child to negotiate. This is a good thing.

Negotiation is our key communication and influence tool. However, most of us enter into negotiations woefully unprepared. Understanding the basic theory of negotiation will validate and identify what you have

been doing, and it will expand your existing skills.

As an experienced real estate and business lawyer and adjunct professor of negotiations for the Portland State University Masters in Real Estate Development and Real Estate Finance, I have witnessed -- and experienced -- the benefits of knowing how to negotiate.

The three most basic rules for negotiations are:

1. Prepare
2. Listen
3. Be Present

This sounds obvious, but how often do we not follow those three basic rules?

## PREPARE

How often do you “wing it” in negotiations? Everyone is guilty of that at some point, but it leads to less effective negotiations. Start your negotiations prepared. To begin, consider procedural issues such as when you should meet, who should be present, and what should be on the agenda. Discussing these issues with your counterparty may clear the way for much more focused talks.

Your preparations should include writing down what you want, but just as important is

to make a list of the other side’s interests and needs. You may not know exactly what those are, however if you spend time exploring what their needs might be, you will be miles ahead as you approach the negotiation. If you enter a negotiation with a list of questions rather than a list of arguments, you are more likely to identify your counterpart’s interests.

Additionally, mitigate the risk of post-negotiation regrets by writing out and testing your thoughts before engaging in a negotiation or difficult situation. Scripting your negotiations will help you avoid being haunted by questions such as, “Why didn’t I say this?!” or “How could I have said THAT!”

Although it’s not always feasible to engage in small talk at the start of a negotiation, it can bring real benefits. You and your counterpart may be more collaborative and likely to reach agreement if you spend even just a few minutes trying to get to know each other. If your negotiation will be over email, even a brief introductory phone call may make a difference.

To prepare for your negotiations, identify your:

- BATNA (Best Alternative To a Negotiated Agreement),
- Target point, and
- Reservation point.

## BATNA

In negotiation, your best source of power is your ability and willingness to walk away and take another deal. That deal is your best alternative to a negotiated agreement, or BATNA. When you are aware that you have an appealing alternative to the deal you’re working on, you will be less tempted to accept an agreement that doesn’t meet your minimum requirements. A strong BATNA gives you the freedom to walk away.

*Please see **Negotiations Basics** on page 6*

## Principal Brokers

Continued from page 1

requirements for license renewal.

- You cannot renew your license early to avoid the new course requirement. Your license is available to renew in the same month it expires.

### **My principal broker license expires for the first time before July 1, 2019. What do I need to know?**

- If you renew your license active before your license expiration date, you will need to meet regular continuing education requirements: 27 hours of continuing education from certified continuing education provider and the 3-hour LARRC.
- If you renew inactive, and then decide to reactivate your license for the first time on or after July 1, 2019, you will need to take the 27-hour PBAP course and the 3-hour LARRC.
- If you fail to renew your active license in time, and you renew late on or after July 1, 2019, you will have to take the 27-hour PBAP course and the 3-hour LARRC. You will also have to pay the \$150 late fee along with the \$300 renewal fee.

### **I already renewed my principal broker license for the first time, but**

### **it was, and still is, inactive. What do I need to know?**

- To reactivate your license before July 1, 2019, you will need to meet regular continuing education requirements: 27 hours of continuing education from certified continuing education provider and the 3-hour LARRC. (Depending on how long you have been inactive, you may also need to [take and pass a reactivation exam](#).)
- To reactivate your license on or after July 1, 2019, you will need to take the 27-hour PBAP course and the 3-hour LARRC.

### **I already renewed my active principal broker license at least once. What do I need to know?**

- For your next license renewal, you just need to meet regular continuing education requirements: 27 hours of continuing education from certified continuing education providers and the 3-hour LARRC.
- Make sure any new principal brokers you associate to your business understand what their [continuing education](#) requirements are. ■

You can check your license expiration date by logging in to your eLicense account and go to Current License Information.

## Commissioner Bentley Retiring

After 11 years with Oregon Real Estate Agency, Commissioner Gene Bentley announced his retirement effective July 7, 2018.

The Agency has had many accomplishments under his leadership, including:

- Transitioning most licensing processes to online.
- Implementing new educational requirements such as the Law and Rule Required Course and the Property Manager Advanced Practices course.
- Developing the Agency's current website.
- Completing multiple administrative rule revisions.
- Enacting an exam for the principal broker license.
- Certifying continuing education providers.

During retirement, Mr. Bentley intends to work on his vacation property and to ski more.

The Agency and Real Estate Board thanks Gene for his years of service to the State of Oregon. ■

# Beware of Virtual Property

Meghan Lewis, Financial Investigator/Auditor, Oregon Real Estate Agency

Reconciling a clients' trust account is not only a requirement of your license, but it's a cornerstone of a successful licensee performing property management activity. By maintaining an accounting system that allows for a clear and accurate reconciliation process, licensees take a proactive approach to protecting clients' trust funds, tenants' security deposits, and their reputation a competent and trustworthy.

A computerized record keeping system is commonplace for today's property management practices and licensees have many options when it comes to selection of a property management software. Knowing you and your staffs' level of expertise with technology, and the paperless world of tenant and owner portals, is not only key to selection of a software program, but critical to maintain accurate data and reports that will be used in the reconciliation process. See [Oregon Administrative Rule \(OAR\) 863-025-0028](#).

The Agency has learned certain types of property management software allow the creation of a bogus, or "virtual," property. As it sounds, a virtual property is not a real property, but a fake property that enables the user to record and store banking activity. Bank activity the user can record on a virtual property are common charges and fees, such as service fees, non-sufficient funds fees, interest charged or accrued, and check fees. It can also be used to record discrepancies, like cleared transactions from an incorrect bank account.

A virtual property can be linked to an owner

income bank account and a tenant security deposit bank account, and can be used to store fees and discrepancies between the bank account and a property ledger that, for whatever reason, are not yet accounted for. While the temptation may be there to "set aside" fees and charges in the virtual property until further researched, this act creates an additional ledger and can lead to improper accounting of your clients' trust funds. Client trust account reviews performed by the Agency have shown the abuse of journal entries for unknown fees and transactions and deposits of licensee funds (comingling) to accommodate these discrepancies.

Bank fees and transaction discrepancies must be allocated within the month they occur on the bank statement to the correct bank account to ensure a balanced, accurate reconciliation. The property manager is responsible for identifying and reconciling these fees and transactions against clients' trust funds per [OAR 863-025-0028](#) and in accordance with duties to the property owner, [Oregon Revised Statutes \(ORS\) 696.890](#).

A virtual property paves the way for failing to identify and properly account for clients' trust funds as required, and failing to properly reconcile a clients' trust account and tenant security deposits account. Failing to do so could result in administrative action against a license, per [ORS 696.301](#).

As a reminder, the Agency performs random clients' trust account reconciliation reviews monthly. ■

## ***"I'm a Property Manager, Not an Accountant!" Is this You?***

While doing property management investigations, reviewing clients' trust account reconciliations, or handling inquires with property managers, Agency staff members have heard the above comment often. Although at times it's meant to be funny, other times the licensees

have been very serious or frustrated when making this remark.

The fact is, as a licensed property manager or principal broker performing property management activities, you are holding the trust funds  
*Please see **I'm a Property Manager** on page 5*

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# ***Affirmative Duties Owed By Property Managers***

If you are a property manager, principal broker, or broker managing rental real estate, you owe affirmative duties to each property owner per [Oregon Revised Statute \(ORS\) 696.890](#). This means you have a special relationship with the property owner that requires you to do certain things.

You must:

- Deal with the owner honestly and in good faith.
- Disclose any material facts you know about that are not apparent or readily ascertainable to the owner.
- Exercise reasonable care and diligence.
- Account in a timely manner for all funds received from or on behalf of the owner.
- Act in a fiduciary manner in all matters relating to trust funds.
- Be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.
- Disclose in a timely manner to the owner any existing or contemplated conflict of interest.
- Advise the owner to seek expert advice on matters that are beyond the property manager's expertise.
- Maintain as confidential all information from or about the owner, except under subpoena or court order, even after the property management agreement is terminated.

These duties cannot be waived by you or the owner. Affirmative duties are in addition to any listed in a property management agreement. ■

## ***I'm a Property Manager***

*Continued from page 4*

or property of others and providing staff and services to accommodate the tax reporting and other financial or accounting needs of the real estate, which is defined as "Management of rental real estate" per [Oregon Revised Statutes \(ORS\) 696.010\(14\)\(D\)\(K\)](#). While performing property management activity, you are required to open a clients' trust account to hold and account for the funds of others, and are liable for all deposits and disbursements made until you close the account or transfer ownership of the account per [ORS 696.241](#) and [Oregon Administrative Rules \(OAR\) 863-025-0028](#).

The clients' trust account monthly "three-way" reconciliations, as required by statutes and rules, appears to be the most confusing for some licensees, and even some accountants. There are property managers who believe if their bank statement and check register balance, then their clients' trust account is in balance. But that isn't the case; the "third leg" of the "three-way" reconciliation is the positive total of the owners' ledgers ([OAR 863-025-0055](#)).

This means the property manager must have an accounting (ledger) of the rents received and funds disbursed on behalf of each property owner. Note: If the account is a security deposit account, then the tenant ledgers ([OAR 863-025-0050](#)) are the "third leg."

The three components required for a clients' trust account reconciliation are:

- The bank statement (with adjustments of outstanding checks and other reconciling bank items).
- The balance of the record of receipts and disbursements or check register ([OAR 863-025-0040](#)).
- The owners' ledgers.

The three components must be equal to, and reconciled with, each other. They must be recorded on a single reconciliation document ([OAR 863-025-0028](#)). The Agency's [reconciliation form](#) is on our website, [www.oregon.gov/rea](http://www.oregon.gov/rea), for your convenience, but you are not required to use it. ■

# ***Negotiations Basics***

*Continued from page 2*

Be sure that your BATNA is not wishful. It must be well researched, factual, and time sensitive. A negotiator should be willing to accept any set of terms superior to their BATNA. In preparations, you should also try to determine the counterparty's BATNA. Generally, neither party should disclose the BATNA in negotiations, until it is time to do so. It is critical that a negotiator does not let the counterparty manipulate his/her BATNA. If you have thoroughly investigated your BATNA, the counterparty does not have the basis to challenge it.

Before arriving at the bargaining table, wise negotiators spend significant time identifying their best alternative to a negotiated settlement, or BATNA, and taking steps to improve it.

## **Target Point**

The target point is where you want to end up. As with all three of these elements, your target point must be realistic, unemotional and supported by the facts and circumstances, but should also be optimistic.

## **Reservation Point**

The reservation point is your realistic and supported minimum requirements in the negotiations. It ties closely with your BATNA. This could be the lowest price, or minimum terms that you are willing to accept.

## **Anchoring**

The first number mentioned in a negotiation, however arbitrary, exerts a powerful influence on the negotiation that follows. You can avoid being the next victim of the anchoring bias by making the first offer (or offers) and trying to anchor talks in your preferred direction. If that other side does anchor first, keep your aspirations and BATNA at the forefront of your mind, pausing to revisit them as needed.

## **Expand the pie**

Another vital task in your preparation is to "expand the pie." Very rarely are there single-

issue negotiations. If you develop multiple issues, you don't need a win-lose negotiation.

It is up to the negotiator to expand the issues. Take the perspective of the other party, ask questions about the other party's priorities, and reveal information about your interests and priorities (but not your BATNA). If you can unbundle issues and create new ones, then you can create a package deal rather than a single issue, win-lose negotiation.

In a distributive negotiation, parties are often stuck making concessions and demands on a single issue, such as price. In integrative negotiation, you can capitalize on the presence of multiple issues to get both sides more of what they want. Specifically, try to identify issues that your counterpart cares deeply about that you value less. Then trade off those issues.

## **LISTEN**

The most important skill in any negotiation is listening. So many disputes can be resolved by carefully listening to your counterparty's concerns. Resist the urge to interrupt and defend yourself. Ask questions aimed at drawing out the other party's core issues. Repeat back what you have heard. If you listen actively, the counterparty will give you keys to your solution.

A good test for your listening skills is to evaluate yourself in a disagreement with a significant other, friend or business partner. How many questions in a row can you ask and answers can you hear without presenting your point of view? This is a difficult test for most of us.

If you are already thinking about your response to your counterparty's comments before they finish talking, you are not listening, and are likely to miss the key to the solution.

Once you start discussing substance, resist the common urge to think about what you're going to say next while your counterpart is talking. Instead, listen carefully to her arguments, then paraphrase what you believe she said to check your understanding. Acknowledge any difficult feelings, like frustration, behind the message. Not only are you likely to acquire valuable information, but the other party may mimic your exemplary listening skills.

Avoid asking “yes or no” questions and leading questions. Instead, craft neutral questions that encourage detailed response, such as “Can you tell me about the challenges you’re facing?”

## BE PRESENT

Being Present is a state of mind that is important in all aspects of life, but particularly in any negotiation. I find this most difficult in telephone negotiations. How many of you are guilty of checking your email when you are on a conference call negotiation? Or, as the counterparty is “droning on”, do you allow your mind to shift to the event you are attending tonight, or what a blow-hard the counterparty is?

We graciously call this “multi-tasking,” which really simply means that you are not being present with any of the multiple tasks that you are addressing. Allowing your mind to wander is a very easy thing to do, but is destructive to reaching a negotiated solution. Remember, if you are not being present, you will miss those key clues the counterparty is giving.

The best training I have found for being present is to work on it with children. Often parents or grandparents will interact with their young ones, with only half of their attention. If you work hard on being present with children, it will vastly develop your skills in negotiation situations.

This is a preliminary and basic introduction to negotiations, but understanding these elements can play an important role in your ability to negotiate for yourself and contribute to the negotiation process when you are represented by others.

In subsequent articles, I will delve more deeply into negotiation tactics and issues.

*Coni Rathbone, Dunn Carney LLP, CRE and PSU Adjunct Professor. Coni is a negotiator and dealmaker who uses her negotiating skills in the areas of real estate, tenant-in-common workouts, corporate securities law, mergers and acquisitions and general business transactions. In addition to practicing law and teaching at PSU, she regularly provides training at real estate brokerage companies and other businesses.*

# Administrative Actions

*The Oregon Real Estate Agency is required by law to publish disciplinary actions. The final order for each action can be viewed by clicking on the individual names listed below.*

*Please note that there are individuals with real estate licenses that may have similar or the same names as those listed below, even in the same market area. If you are in doubt if an individual listed here is someone you know or with whom you are working, please contact the Agency for verification.*

*Stipulated settlements do not necessarily reflect all the factual violations initially alleged by the Agency. Sanctions may have been adjusted as part of the negotiation process. Such settlement may not, therefore, directly compare in severity/sanction with other cases.*



## REPRIMANDED

[Silver, Barbara](#) (Fall Creek) Principal Broker 881200007. Stipulated final order dated April 20, 2018.

[Wise, Richard E.](#) (Brookings) Broker 201211569. Stipulated final order dated April 23, 2018.

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Oregon Real Estate Agency  
530 Center St. NE Ste. 100  
Salem, Oregon 97301  
Telephone: (503) 378-4170

Facsimile:

(503) 378-2491

(503) 373-7153 Regulation

Web Page:

<http://www.oregon.gov/rea>

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Mesheal Heyman, Editor

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